

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE 1970

AND

IN THE MATTER OF the Complaint made by Mr. Roland Cooper of Toronto, Ontario, that he was terminated from his employment because of his race and colour by BELMONT PROPERTY MANAGEMENT and GEORGE SEIDEL, MONTE GOLDSTONE, GROSSMAN HOLDINGS LIMITED, BLEEMAN HOLDINGS LIMITED and J. SILVER HOLDINGS LIMITED.

DECISION

On the 9th day of March, 1973, I was appointed a Board of Inquiry under the Ontario Human Rights Code R.S.O. 1970 c. 318 as amended, to hear and decide the Complaint made by Mr. Roland Cooper of Toronto, Ontario, that he was terminated from his employment because of his race and colour by Belmont Property Management, Toronto, Ontario. The hearing was set for April 5th but was re-scheduled for April 26th when it became apparent that one of the parties was out of the country on the earlier date.

The hearing proceeded on April 26th and 27th but the original estimate of days proved to be insufficient. As a result the hearing proceeded on the odd days over the next month when the parties, witnesses, counsel and chairman were all available. The hearing concluded on May 29th.

A further delay was experienced in awaiting the completion of the transcript which I received in the first week



of July. That delay is understandable when one considers that the transcript ran to 583 pages.

A total of 17 witnesses were called to testify and a considerable amount of documentary evidence was entered, some of it of a rather technical nature. I did, therefore, want to have an opportunity to peruse the transcript carefully before rendering a decision.

At the outset, the issue arose as to whether Belmont Property Management, as such, could be a party to a proceeding before a board of inquiry since the Ontario Human Rights Code speaks only of a "person". The issue was resolved with the agreement of counsel, by the adding of the three corporate partners and two individuals as parties under section 14b.--(1) (e) of the Code. The parties added were Grossman Holdings Limited, Bleeman Holdings Limited, J. Silver Holdings Limited, Mr. George Seidel and Mr. Monte Goldstone.

If these parties had not been added it would have been questionable whether it would have been at all possible to find that there had been a contravention of the Code. Section 14c authorizes (and requires) the board to "...decide whether or not any party has contravened..." the Code. [Emphasis added]. Quaere: whether a partnership, as such, is a "person" capable of being a party to these proceedings: The Interpretation



Act R.S.O. 1970 c.225, S. 30.28 and The Partnerships Act  
R.S.O. 1970 c. 339.

Two further questions of law arise. The first is whether a board can lawfully decide that there has been a contravention of the Code because of an act of discrimination against a person other than the Complainant. (eg.--against Mrs. Cooper, the Complainant's wife). The second is whether a board can lawfully decide that there has been a contravention of the Code because of an act of discrimination which, although prohibited by the Code, is not alleged in the Complaint (eg.--with respect to creed or marital status when the Complaint alleges only discrimination with respect to race and colour).

A supplementary issue arises in connection with the second question. This relates to the interpretation of the scope of the phrase "marital status". The usual type of discrimination one might envisage here is where a woman is unable to obtain employment because she is married rather than single. But what if she is refused employment not simply because she is married, but because she is married to a black man? Is she then being refused employment because of her "marital status"?

1. The first part of the document is a letter from the President of the United States to the Congress.

2. The second part is a report from the Secretary of the Treasury.

3. The third part is a report from the Secretary of the Interior.

4. The fourth part is a report from the Secretary of the Navy.

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6. The sixth part is a report from the Secretary of the State.

7. The seventh part is a report from the Secretary of the Army.

8. The eighth part is a report from the Secretary of the Navy.

9. The ninth part is a report from the Secretary of the War.

10. The tenth part is a report from the Secretary of the State.

11. The eleventh part is a report from the Secretary of the Army.

12. The twelfth part is a report from the Secretary of the Navy.



The refusal would not be one which is made unlawful because of "colour" under the Code since section 4(1) (b) only prohibits such a refusal where the colour in question is that of the person being refused employment. That section provides: "No person shall...(b)...refuse to employ...any person...because of...colour...of such person..." [Emphasis added].

To deal with this supplementary issue first, I am clearly of the opinion that the phrase "marital status" is broad enough to encompass the situation posited. The Interpretation Act R.S.O. 1970 c. 225 provides:

"10. Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of anything that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit."

Surely the interpretation of "marital status" in the example given would be a classic occasion for the application of section 10.

It might be argued that "the restrictive interpretation technique" should be applied to this situation. To use the words of Professor Tarnopolsky in describing that approach:

"...the courts have used a principle of statutory interpretation whereby the common law rights of the subject cannot be restricted by ambiguous statutes. The presumption is





against the imposition of taxation, or the imposition of a penalty or the taking away of common law rights, unless the words of the Statute are clear." (1971) 17 McGill Law Journal 437 at 438-9.

Thus, to use that approach (but in a manner opposite to that advocated in the article cited) it could be argued that since the Ontario Human Rights Code could result in adverse consequences to a person being complained against, any of its provisions which are not completely unambiguous should be interpreted very restrictively. The phrase "marital status" would therefore have to be interpreted to have the narrower meaning.

In my opinion, there is no ambiguity in applying the phrase "marital status" to the example given. In any event, I prefer Friedmann's view that:

"The presumption (with respect to penal statutes) is probably still applicable in the case of common law crimes, whether consolidated by statute or not, but it should be discarded in the case of modern statutory offences which are a special type of 'social purpose' Statute". (1948) 26 Canadian Bar Review 1277 at 1298.

The Ontario Human Rights Code is obviously such a statute. Finally, it might be argued that the "presumption" has no application to the Ontario Human Rights Code which does not purport to be a penal statute. (See generally: "Is There A Right Against Self-Incrimination In Canada?" 19 McGill Law Journal 1 at pp. 65-6.



Many of these considerations are also applicable to the original two questions of law which were raised, namely whether there can be a finding that a person other than the Complainant had suffered discrimination and whether there can be a finding of discrimination of a kind not alleged in the complaint.

My appointment by the Minister of Labour was to hear and decide "...the complaint made by Mr. Roland Cooper of Toronto, Ontario that he was terminated from his employment because of his race and colour..." [Emphasis added]. It would, therefore, on the face of it, seem to be outside of the jurisdiction granted for a board of inquiry in these circumstances to find, for example, that Mrs. Cooper had been terminated from her employment because of her marital status.

However, I take the view that the appointment must be read in the context of the Code. The Code requires that:

"14c. The board, after hearing a complaint,  
(a) shall decide whether or not any party  
has contravened this Act;"

In my opinion, that section does not restrict the decision of a board to determining the specific complaint. Rather, it requires the board to decide whether the proceeding discloses any contravention of the Code.

The first part of the report discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The report also highlights the need for regular audits and the importance of having a clear and concise set of accounting principles.

The second part of the report focuses on the role of the auditor in the financial system. It describes the various responsibilities of the auditor, including the need to maintain independence and objectivity. The report also discusses the importance of the auditor's report and the role of the auditor in providing assurance to the public.

The third part of the report discusses the importance of transparency in the financial system. It emphasizes that transparency is essential for the public to understand the financial system and to make informed decisions. The report also discusses the need for the financial system to be open and accessible to the public.

The fourth part of the report discusses the importance of the financial system in the economy. It emphasizes that the financial system is essential for the growth and development of the economy. The report also discusses the need for the financial system to be stable and sound.

The fifth part of the report discusses the importance of the financial system in the future. It emphasizes that the financial system must be able to adapt to the changing needs of the economy and to the challenges of the future.

Thus, "to hear and decide...the complaint made by Roland Cooper" means to decide it as required by the Code. The Code in turn requires that the decision be whether or not the proceedings disclose any contravention of the Code.

The Statutory Powers Procedure Act R.S.O. 1971 c. 47 must also be kept in mind. It provides:

"S. 8. Where the good character, propriety of conduct or competence of a party is an issue in any proceedings, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto."

In my opinion, the allegations of contraventions of the Code which arose indirectly in the course of the proceedings were so related to the actual complaint of Roland Cooper that the parties against whom a finding of contravention might be made could suffer no prejudice because of the absence of specific allegations under section 8.

The complaint of Mr. Roland Cooper, dated November 7, 1972, is that Belmont Property Management committed an unlawful act relating to employment because of race and colour. The particulars are:

My wife and I began our employment as part-time superintendents with Belmont Property Management on May 1, 1972. The building was in a mess. Hallways, the incinerator rooms, etc. were unkept. Tenants came to us complaining about repairs which had been ignored for 2 to 3 years. Within a month we cleaned up the mess and did



repairs and tenants told us that they were very grateful for this. We have had no complaints from either management or tenants about our work ever since. Despite this, on November 1, 1972, Mr. Goldstone who took over as Property Manager on October 1, 1972, issued a letter of dismissal.

I am a black man from the U.S.A. and allege that I was dismissed from my job as superintendent on the basis of race and colour in contravention of section 4 of the Ontario Human Rights Code, 1970 (as amended).

What are the Facts?

Early in January of 1972 Mr. and Mrs. Cooper and their children moved to the apartment building known as 32 Carl Luke Crescent. That building is one of a cluster of six buildings operated by Belmont Property Management. Belmont Property Management also manages numerous other rental properties in Toronto. There the Coopers became friends of Mr. and Mrs. MacLellan who were "part-time superintendents" for that building.

The MacLellans eventually told the Coopers about their duties and perquisites as "part-time superintendents". When the Coopers expressed interest in entering into a similar arrangement, the MacLellans recommended them for such positions. On May 1st, 1972, the Coopers entered into a purported agreement in writing between themselves and "Belmont Property Management" by which they agreed to act as "Building Maintenance Supervisors of 16 Carl Luke Crescent". In effect, they were hired by Peter Dorpat





who, at the time, was Property Manager for the project. The situation for the project was then that three of the buildings were operated by such "part-time supervisors" and three by "full-time supervisors". (The word "supervisor" is used in the document while most witnesses used the word "superintendent").

The arrangement for "part-time supervisors" was that they would assume responsibility for the supervision, maintenance and cleanliness of the building (although the actual cleaning was done by others). In addition, they would rent vacant apartments, keep track of tenants moving in and out, and collect rents. The "agreement" specifically provided that: "Mr. and Mrs. Cooper will answer all telephone calls concerning rental inquiries, complaints, etc.".

The building located at 16 Carlue Crescent was known as "the pet building" since it was the only one of the six in which tenants were ostensibly allowed to have pets. When the Coopers moved in, the building was in a deplorable state. A succession of earlier superintendents had allowed the condition of the building to deteriorate in terms of cleanliness and state of repairs. Vandalism was common and the complaints of tenants seldom received satisfactory responses.

The Coopers attacked the challenge with a vengeance and a series of tenants testified that, within a month, the condition of the building as well as the day to day supervision improved



greatly. As Mrs. Cooper put it, they did "step on a few toes" but, generally speaking, the relationship between the Coopers and the tenants in their building seemed to be good.

Mrs. Cooper testified with respect to at least two incidents concerning tenants in which abusive and derogatory remarks were made to her about her marriage to a black man (Mrs. Cooper is white). Both of these incidents represent clear and disgusting examples of discrimination. However, I find that they are not relevant to this inquiry on the facts presented.

They might well have been relevant if they had been acted upon by management. Thus, for example, if after hiring the Coopers a number of tenants began to move out and stated that their only reason for doing so was that Mr. Cooper was black, the management would have been in breach of the Code if it had dismissed them. Would it not be sufficient for the employer to say: "I am not acting out of prejudice, but simply on the basis of a profit motive. Surely that is the basis upon which all businessmen must act?" In my opinion such a response would not be a justification. In other words, it would be insufficient to show that a decision was the correct one on economic grounds if it were based on the fact of prejudice.



A businessman is entitled to earn a profit but that is only if in doing so he complies with the laws of this country. The Ontario Human Rights Code forms part of those laws. Section 4. (1) (b) provides that "No person shall...dismiss...any person...because of...colour...of such person." In my opinion that section is applicable whether colour is the direct or indirect cause. It is equally as important that the rights of a black employee be protected as those of a middle-class white tenant or businessman.

However, in the course of this inquiry there was no evidence to suggest that the management or Mr. Goldstone acted upon or even received complaints about the Coopers based upon race, colour, religion or marital status. Two tenants, both clearly prejudiced against Mrs. Cooper, had threatened to complain to "head office" or Mr. Goldstone. However, both Messrs. Goldstone and Seidel denied receiving complaints along racial lines and I believe them. Mr. Dorpat had received comments along these lines but he ignored them and did not bother to pass them on to his superior.

To return to the progression of events, the Coopers were justifiably proud of their performance in supervising and maintaining their building although they may have been a little more enthusiastic about their success than others. That

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suggestion clearly arises from their description of the reaction of Mr. Dorpat and Mrs. MacLellan to their performance as compared to the actual reactions of these persons when testifying. In any event, there is general agreement that in this aspect of their duties they had done well.

In September of 1972, Mr. Dorpat retired as one of the Property Managers and was succeeded by a Mr. Burns alone who was replaced a few weeks later by a Mr. MacKenzie. In addition, however, Belmont Property Management assigned to the project in question a Property Superintendent, namely, Mr. Monte Goldstone. Mr. Goldstone testified that he was sent to try to rectify problems which existed with respect to the number of vacancies existing at the time, the amount of monies outstanding and the condition of some of the buildings.

Within one month the Coopers received a letter indicating that their employment was to be terminated effective November 15th. The letter stated that the employer wished to obtain a full-time superintendent for 16 Carluke Crescent.

Mr. and Mrs. Cooper felt keenly disappointed by this turn of events and a few days later filed the Complaint referred to earlier. No direct evidence of discrimination emerged during the course of the inquiry. That is not unusual since very often



those who practise discrimination do not do so openly. Often it can only be proven by a pattern and coincidence of events coupled with the hollowness of explanations offered. It is, therefore, necessary to examine the evidence carefully to determine whether there is a pattern pointing to discrimination or whether another explanation of the facts is more plausible.

I have listened carefully to the testimony of 17 witnesses, have heard the able arguments of counsel and have read and re-read the transcript. I am unable to conclude on the evidence presented that any party has contravened The Ontario Human Rights Code.

There is no doubt that the pattern and coincidence of events on the face of them raise strong suspicions of contravention. However, after the evidence has been presented in full and tested by vigorous cross-examination it becomes apparent that the most plausible explanation of the facts is based upon: (1) the person relationship between Mr. Goldstone and Mrs. Cooper; and (2) the fact of a quick, crude and harsh (but probably not uncommon in the business world) business decision. To conclude that the termination of the employment of the Coopers was based on discrimination would be to abandon the process of drawing inferences from the facts in order to support a suspicion by speculation.

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The relationship between Messrs. Goldstone and Cooper was almost non-existent. There is no serious allegation of evidence to support discrimination on the basis of their inter-relationship. The gist of the complaint on the basis of the evidence really relates to the relationship between Mr. Goldstone and Mrs. Cooper. That relationship seemed doomed from the start.

Mrs. Cooper is a bright woman and a strong personality. The Property Manager who hired her, Mr. Dorpat, suggested that she was capable of more demanding work:

"...(Her employment as superintendent) was a necessity of life because very seldom a person of the level of intelligence that Mrs. Cooper has would like a job as superintendent, but the necessity of life most probably forced them to accept that kind of job." (p. 143).

Indeed, Mr. Dorpat spoke to her about the possibility of her taking on the job of rental agent for the entire project. Mrs. Cooper may have been disappointed when that position was given to another. Mr. Cooper's testimony clearly indicates that there was resentment against the person who did become the rental agent:

"...the thing that was bothering us was the fact that they had brought a rental agent (the one who was hired instead of my wife) in doing these duties, and she was a thorn in the flesh of all of us..." (p. 243).



Clearly, any disappointment about not receiving the position would not have been diminished by such relations with the person who was in fact hired.

As indicated earlier, Mrs. Cooper did not hesitate to "step on a few toes" in the line of duty. Mrs. MacLellan, who seemed to be close to the Coopers, testified that she felt on occasion that Mrs. Cooper was abrupt with tenants. She gave as an example that once when tenants called on Mrs. Cooper during the supper hour she simply told them to come back later. The MacLellans, on the other hand, would respond immediately. Mrs. MacLellan also testified that Mrs. Cooper seemed to feel that when she went to the management office she should be looked after right away. She did not like to wait around.

Mrs. Burrows, the Office Manager at the project, described Mrs. Cooper as being "difficult to get along with". She was not "willing to please" as were the other superintendents. When Mrs. Cooper would come into the office, she would inform Mrs. Burrows that she was in a hurry and she "felt that she should be waited on first". Mrs. Burrows gave the impression of being slightly over-enthusiastic in commenting negatively about Mrs. Cooper but I accept the substance of her testimony if not the interpretation she places on it. Indeed, it might well have



1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1801. It is a very important document, as it is the first time that the President has addressed the Congress since the establishment of the office.

2. The second part of the document is a report from the Secretary of the Navy, dated January 10, 1801. It contains information about the state of the Navy and the ships that are in service.

3. The third part of the document is a report from the Secretary of the Treasury, dated January 15, 1801. It contains information about the state of the Treasury and the finances of the government.

4. The fourth part of the document is a report from the Secretary of the War, dated January 20, 1801. It contains information about the state of the War and the troops that are in service.

5. The fifth part of the document is a report from the Secretary of the Interior, dated January 25, 1801. It contains information about the state of the Interior and the lands that are in service.

6. The sixth part of the document is a report from the Secretary of the Education, dated February 1, 1801. It contains information about the state of the Education and the schools that are in service.

7. The seventh part of the document is a report from the Secretary of the Agriculture, dated February 5, 1801. It contains information about the state of the Agriculture and the crops that are in service.

8. The eighth part of the document is a report from the Secretary of the Commerce, dated February 10, 1801. It contains information about the state of the Commerce and the trade that is in service.

9. The ninth part of the document is a report from the Secretary of the Marine, dated February 15, 1801. It contains information about the state of the Marine and the ships that are in service.

10. The tenth part of the document is a report from the Secretary of the Air, dated February 20, 1801. It contains information about the state of the Air and the aircraft that are in service.

11. The eleventh part of the document is a report from the Secretary of the Space, dated February 25, 1801. It contains information about the state of the Space and the spacecraft that are in service.

been that Mrs. Cooper was not "snobbish" but rather, efficient and anxious to return to her duties. The point is merely that she has a strong personality which does not bend easily.

If Mrs. Cooper was an immoveable object, Mr. Goldstone was an irresistible force. A quartermaster sergeant in the English army for 6½ years in World War II, he was described as a "trouble shooter" for Belmont Property Management. Perhaps Mrs. MacLellan's testimony best sums up his personality:

"He was very strict, very abrupt. He had a job to do: he did it. He never really... I think at times he was impulsive and could hurt you without meaning to." (p. 261).

Mr. Goldstone's attitude to employees under him was perhaps best indicated by his suggestion that they should be at his "beck and call".

At a very early stage in their relationship, Mr. Goldstone seems to have concluded that Mrs. Cooper did not have the "right attitude" of an employee. Mrs. Cooper concluded that he was prejudiced. As she put it:

"I came to feel that he was feeling this way because of an inter-racial marriage. He left me with this impression. I have seen it before in people. It is something that only when a person is involved can they usually pick this out. This is what I felt." (p. 116).

It seems as though every action on the part of one was interpreted by the other as reinforcing his or her own early impression until there was a hopeless gap between them.



Shortly after Mr. Goldstone arrived he called a meeting. He clearly intended to make sure that everyone understood why he was there. His message was, in effect, that things were slack and unless they improved, heads would roll. The Coopers did not attend that meeting. The evidence is that they were aware of it but received no formal notice. They made no effort to inform Mr. Goldstone of the arrangements they had made with the previous property manager to be away at the time. One can imagine Mr. Goldstone's reaction when they were not present.

There were numerous other examples -- the setting up of tables and decorations for Halloween, Mrs. Cooper's appearances in pin curlers, the hanging of a sign in the elevator, Mr. Feltham's complaints about the Coopers as an expression of his own insecurity, the absences of the Coopers from their apartment, almost gleefully reported to Mr. Goldstone by Mrs. Burrows. Each incident, or the reaction of Mr. Goldstone or Mrs. Cooper to it, or the interpretation given to the reaction of one by the other, simply made matters worse. But it is difficult to see in any of them a motive on her part of neglecting her duties or on his part of discrimination.

Perhaps the following passages are illustrative. Mrs. Cooper said:

"he just kind of shook his head and turned and walked away, which he often did when I would



make a suggestion to him and to counter whatever he had asked me about; and he would just walk away rather than settle the thing and come to some sort of an agreement." (p. 93).

On the other hand, Mr. Goldstone's view is probably reflected in the following passage:

"One has to adopt my policy and way of thinking as I am responsible and have been sent here to sort the problems out." (p. 367).

In other words, Mrs. Cooper felt he should negotiate while Mr. Goldstone felt she should obey.

I have analyzed and considered each of these incidents in detail together with other incidents such as the returning of the keys. There is no point in elaborating upon my reflections in detail. I have found the testimony of Mrs. MacLellan, in particular, to be very helpful. She was a frank and forthright witness with no axe to grind and no one to impress. She testified that the Coopers were not treated any differently than the other superintendents and that she was really not surprised by the termination. She did not feel that their termination was due to discrimination.

In addition, the absences of the Coopers was a real if not a major problem. Mr. Dorpat had received complaints from tenants about these absences and had discussed the matter with





the Coopers but testified that the problem never was satisfactorily resolved during his time as Property Manager. The other superintendents grumbled about the time taken off by the Coopers and Mr. Feltham (unfairly, he admitted) set up his "covering off" for the Coopers as an excuse for possible criticism of his own performance. Thus the problem existed, although it was probably greater in dimension as perceived by Mr. Goldstone than in reality.

The reason given to the Coopers for the termination of their employment was that Belmont Property Management wished to retain a full-time superintendent for the "pet building." Mr. Seidel testified that in the last week of October 1972, he had asked Mr. Goldstone to see him. As a result of his weekly review of vacancy summaries in the various buildings, Mr. Seidel had become concerned about the lack of rentals in this building and had questioned Mr. Goldstone about the problem. Mr. Seidel testified that he concluded that the building was maintained at a satisfactory level but that not enough attention was being given to the re-rental of suites and a full-time superintendent was needed. Mr. Seidel testified that he did not know until approximately two weeks later that Mr. Cooper was black or that Mrs. Cooper was white.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the transparency and accountability of the organization. The text outlines the various methods used to collect and analyze data, ensuring that the information is reliable and up-to-date. It also mentions the role of technology in streamlining these processes and reducing the risk of errors.

The second part of the document focuses on the financial aspects of the organization. It provides a detailed overview of the budget, including the projected income and expenses for the upcoming year. The text highlights the need for careful financial management to ensure that the organization remains solvent and able to meet its obligations. It also discusses the importance of regular financial reviews and the role of the board of directors in overseeing these matters.

The third part of the document addresses the operational challenges faced by the organization. It identifies the key areas where improvements are needed, such as the efficiency of the production process and the quality of the services provided. The text proposes several strategies to address these challenges, including the implementation of new technologies and the hiring of additional staff. It also emphasizes the importance of ongoing training and development for the existing workforce.

The final part of the document provides a summary of the key findings and recommendations. It reiterates the importance of maintaining accurate records, managing the budget effectively, and addressing operational challenges. The text concludes by expressing confidence in the organization's ability to achieve its goals and improve its performance in the future.

A considerable amount of evidence was entered on the larger issue of whether or not the Coopers had in fact done as good a job as possible with respect to the renting of suites. It was suggested that they did not receive adequate cleaning staff to prepare suites for showing. But it was also suggested that since the building allowed pets it should be easier to rent. On the other hand, it was argued that pets were allowed in the other buildings anyway, and at lower rents. There was conflicting testimony as to which of the buildings would be the noisiest because of proximity of Highway 401.

A great deal of documentary evidence was also introduced and vigorously challenged on the issue of whether Mr. Seidel was justified in concluding that the part-time superintendent at 16 Carluke Crescent should be replaced by a full-time superintendent. Mr. Goldenburg put the case as strongly as it could possibly be put, in my opinion, that the decision to hire a full-time superintendent was not a convincing explanation for the dismissal of the Coopers. It did not, he argued, take into account the relative performance of the other buildings. Nor did it take into account the factors mentioned in the previous paragraph which might have shown that the performance of the Coopers was the best possible in the circumstances.



It is, of course, true that because two factors exist together does not necessarily mean that one is the cause of the other. But in my opinion Mr. Seidel's decision to attempt to deal with the vacancy situation in 16 Carlue by hiring full-time superintendents need not submit to the requirement of a demonstrative causal relationship. It is sufficient merely that a decision to act as he did upon the figures available is a better explanation than that he was acting on the basis of discrimination. In my opinion his explanation is the more acceptable one on the facts, although surely Mr. Goldstone's personality clash with Mrs. Cooper could have been a strong contributing factor.

The project in question was clearly in difficulties in the fall of 1972. Drastic action was taken. Two Property Managers were removed and a "trouble shooter" was sent. The weekly figures viewed by Mr. Sidel indicated to him a serious trend. He consulted his man on the scene and decided to act. The statistics may not have been precise and another person might not have acted on them but I believe his testimony that he did act upon them. It would be superfluous to analyze them in detail here.

Was his decision based on an impressionistic view of the statistics and out of all proportion to the hardship and



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DECISION

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BOARD OF INQUIRY

EDWARD J. RATUSHNY

DATED: JULY 27, 1973.





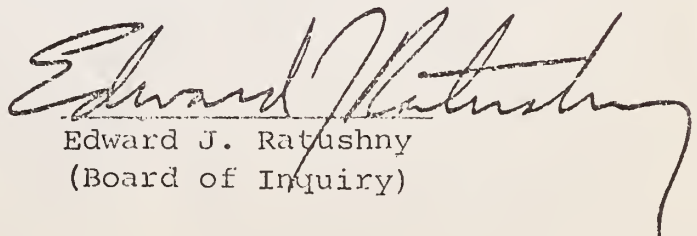
bitterness created? Was it abrupt and cruel? It may well have been all of these things. But the Ontario Human Rights Code does not generally require employers to be kind or reasonable. It only prohibits them from discriminating in certain specified ways. In fact, business decisions are often made this way, particularly where the operation is not sophisticated and highly staffed. As hard as the circumstances might be, they do not point to a contravention of the Code.

It is true that Mr. Goldstone offered the Coopers a full-time position and that might have been a simple answer to the whole matter. However, it is difficult to take that offer seriously having in mind the nature of Mr. Cooper's existing employment.

On the issue of co-operation with the Commission, some of the same kind of lack of communication seemed to exist between Belmont Property Management and Mr. Mawande. However, it was not serious. In any event, it is doubtful in my mind that this rather long and complicated matter could have been adequately resolved by other than a full and complete public hearing of this nature.

In accordance with section 14c. of the Code, I have decided that no party has contravened that Act.

Dated this 27th day of July, 1973.

  
Edward J. Ratushny  
(Board of Inquiry)

